

Declaration of Mark C. Mao

Exhibit 6



An opinion authored by Judge Yvonne Gonzalez Rogers on Monday found that the plaintiffs prosecuting a class action alleging that Google surreptitiously intercepts and collects users' data even while users are in a private browsing mode met the requirements to pursue claims on behalf of an injunctive relief class, but not a damages class.

In the 34-page ruling that also addressed dueling *Daubert* motions, the court found that individualized questions of fact created certification-defeating predominance issues.

After Judge Lucy H. Koh, now of the Ninth Circuit Court of Appeals, denied Google's motion to dismiss in part, the case proceeded towards certification. Judge Koh's opinion found that the plaintiffs did not consent to Google's collection of their data including their IP address, information identifying the browsing software, geolocation, and information contained in Google cookies.

The plaintiffs moved for certification of a proposed nationwide class under Federal Rules 23(b)(2) and 23(b)(3) on Federal Wiretap Act, California Computer Data Access and Fraud Act, as well as breach of contract and privacy-related claims. They also sought certification of a California-resident only class for violation of the California Invasion of Privacy Act.

In this week's opinion, Judge Gonzalez Rogers ruled that four contested expert opinions could partially stay in the mix. Turning to class certification, the court agreed with Google that the affirmative defense of implied consent raises individualized issues that defeat predominance as to all of the plaintiffs' claims.

In so finding, the court relied on evidence Google presented that "its consent defense would be based on individual, and subjective, interactions of what certain class members knew, read, saw, or encountered." Concluding that the jury would be tasked with filtering out which Google Chrome users consented to the alleged conduct, and how, the court said that certification of a damages class was inappropriate.

The plaintiffs are represented by Boies Schiller & Flexner LLP, and Google by Quinn Emanuel Urquhart & Sullivan LLP.

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